

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: [REDACTED]

In Matter of:

Respondent: Gutierrez Soto, Emilio

Currently residing at:

E.P.S.P.C., 8915 MONTANA AVE. EL PASO, TX 79925

(Number, street, city, state, and ZIP code)

(Area code and phone number)

1. You are an arriving alien.
 2. You are an alien present in the United States who has not been admitted or paroled.
 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

- 1) You are not a citizen or national of the United States.
- 2) You are a native of Mexico and a citizen of Mexico.
- 3) You attempted to enter the United States at the Antelope Wells Border Crossing Station, Columbus, NM on 6/16/2008.
- 4) You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

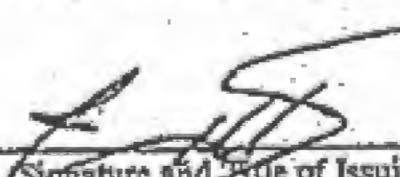
Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
 Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
ELP Immigration Court, El Paso S.P.C., 8915 Montana, El Paso, TX 79925

(Complete Address of Immigration Court, Including Room Number, if any)

on To Be Determined at To Be Determined to show why you should not be removed from the United States based on the charge(s) set forth above.


Jack Beloer
Supervisory Asylum Officer
(Signature and Title of Issuing Officer)

Date: 7/8/08

Houston, TX
(City and State)

See reverse for important information

Form I-862 (Rev. 3-22-99)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appoint an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

(Signature of Respondent)

Date:

Before:

(Signature and Title of DHS Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 7/8/08 (Date), in the following manner and in compliance with section 239(a)(1)(F) of the Act:

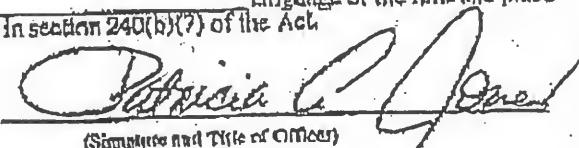
in person by certified mail, return receipt requested by regular mail

Attached is a credible fear worksheet.

Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.


(Signature or Seal of Respondent Personally Served)


(Signature and Title of Officer)

A#77491780

Form I-862 (Rev. 3-22-99)

BIOGRAPHIC INFORMATIONSECTION II:

2.1	<u>Gutierrez Soto</u>		2.3		
	Last Name/ Family Name [ALL CAPS]				
2.2	<u>Emilio</u>			Middle Name	
	First Name			2.5	Gender <u>male</u>
2.4	<u>6/18/1963</u>				
	Date of birth [MM/DD/YY]				
2.6	<u>None</u>		2.8	<u>Mexico</u>	
	Other names and dates of birth used			Country (countries) of citizenship (list all)	
2.7	<u>Mexico</u>		2.11	<u>Catholic</u>	
	Country of birth			Applicant's religion	
2.9	<u>Calle Soya, Corner Catalpa, Ascension, Chihuahua</u>		2.12	<u>Spanish</u>	
	Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).			All languages spoken by applicant	
2.10	<u>Mestizo</u>		2.13	Marital status: <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Legally separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	
	Applicant's race or ethnicity			Did spouse arrive with applicant? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2.14	Did spouse arrive with applicant?		2.15	Is spouse included in applicant's claim? <input type="checkbox"/> Yes <input type="checkbox"/> No	
2.16	If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant; provide A-Number): _____ _____			If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant; provide A-Number): _____ _____	
2.17	Children: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		2.18	List any children (Use the continuation section to list any additional children):	
Date of birth (MM/DD/YY)	Name	Citizenship	Present location (If w/PA, list A-Numbers)	Did child arrive with PA?	Is child included in PA's claim?
<u>06/03/1993</u>	<u>Oscar Emilio Gutierrez Soto</u>	<u>Mexican</u>	<u> </u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below. Yes No

2.20 Has applicant notified the facility of medical condition? Yes No

2.21 Does applicant claim that the medical condition relates to torture? Yes No

2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above? Yes No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):

Celso Jaquez Perez Friends

Name

Los Cruces, NM Relationship

Address

Citizen Legal Permanent Resident Other

SECTION III:

CREDIBLE FEAR INTERVIEW

THE FOLLOWING NOTES ARE NOT A VERBATIM TRANSCRIPT OF THIS INTERVIEW. THESE NOTES ARE RECORDED TO ASSIST THE INDIVIDUAL OFFICER IN MAKING A CREDIBLE FEAR DETERMINATION AND THE SUPERVISORY ASYLUM OFFICER IN REVIEWING THE DETERMINATION. THERE MAY BE AREAS OF THE INDIVIDUAL'S CLAIM THAT WERE NOT EXPLORED OR DOCUMENTED FOR PURPOSES OF THIS THRESHOLD SCREENING.

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

3.1 a. Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned?

Yes No

See Q & A

b. Do you have any reason to fear harm from anyone in any country to which you may be returned?

Yes No

See Q & A

c. If YES to questions a and/or b, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).

Race Religion Nationality Membership in a particular social group Political Opinion

3.2 At the conclusion of the interview, the asylum officer must read the following to applicant:

If the Department of Homeland Security determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. If the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you may be removed from the United States as soon as travel arrangements can be made. Do you have any questions? YES NO

3.3 At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

***Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

SECTION IV:

CREDIBLE FEAR FINDINGS

A. Credible Fear Determination:

Credibility

4.1 There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.

4.2 Applicant found not credible because (check boxes 4.3-4.5, which apply):

4.3 Testimony was internally inconsistent on material issues.

4.4 Testimony lacked sufficient detail on material issues.

4.5 Testimony was not consistent with country conditions on material issues.

Nexus

4.6 Race 4.7 Religion 4.8 Nationality 4.9 Membership in a Particular Social Group

(Define the social group):

4.10 Political Opinion 4.11 Coercive Family Planning [CFP] 4.12 No Nexus

Credible Fear Finding

4.13 Credible fear of persecution established.

OR

4.14 Credible fear of torture established.

OR

4.15 Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

B. Possible Bars:

4.16 Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):

4.17 Particularly Serious Crime 4.18 Security Risk 4.19 Aggravated Felon

4.20 Persecutor 4.21 Terrorist 4.22 Firmly Resettled

4.23 Serious Non-Political Crime Outside the United States

4.24 Applicant does not appear to be subject to a bar(s) to asylum or withholding of removal.

C. Identity:

4.25 Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):

4.26 Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).

4.27 Passport which appears to be authentic.

4.28 Other evidence presented by applicant or in applicant's file (List): _____

4.29 Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

SECTION V:

ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1 Jennifer Wetmore ZHN 076
Asylum officer name and ID CODE (print)

5.4 Jack Berger/Will Bierman/Chris Vu
Supervisory asylum officer name

5.2 _____
Asylum Officer's Signature
5.5 _____
Supervisor's Signature

5.3 J. Wetmore
Decision date
5.6 06/23/08
Date Supervisor Approved
decision

ADDITIONAL INFORMATION/CONTINUATION

See Notes & Assessment

Alien Number: A77 491 780
Name: Emilio Gutierrez Soto
Country: Mexico
Asylum Office: ZHN

Date: June 19, 2008
Asylum Officer: ZHN076

INTERVIEW INITIATED 1942 INTERPRETER 545772

OATH ADMINISTERED

PARAGRAPH 1.28, FORM I-870, READ TO APPLICANT

Q. Do you have an attorney?

A. No, I don't have one.

Q. Do you wish to continue with this process without attorney?

A. Yes, of course.

BIOGRAPHIC QUESTIONS from I-870

Q. What date did you present yourself to border?

A. it was this past Monday in June 16

Q. Where?

A. Antelope Wells

Q. Do you remember receiving a document describing this process and free legal services?

A. Yes, it was on Tuesday.

Q. Have you entered the US previously? How many times?

A. Yes, like 9-10 years ago. When I lived in Juarez, I used to come in often.

Q. Were you ever refused entry?

A. Yes, one time I was trying to get through to pick up some material and I was bringing with me a bottle of alcohol and when the officer looked at me and got mad and didn't let me in.

Q. When was this?

A. About 10 years ago.

Q. What did the officer do when he refused?

A. The officer asked me if I worked in the US and I said no but he didn't believe me and insisted I did. He told me that he could keep my passport if he wanted.

Q. Were you taken into custody?

A. He kept my passport and told me to go home. First, I was placed in an office with another officer for a while and then they told me to go home.

Q. Did they take your fingerprints?

A. Yes.

Q. What is your occupation/work?

A. I am a reporter.

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Q. Where do you work?
A. For El Diario Noreste, it's a newspaper.

Q. What type of reporter are you?
A. I'm in charge in the places Paloma, Ascension, Janos and report on things from that area.

Q. How long been a reporter?
A. 25 years.

Q. Have you worked any other publication?
A. Only 8 years with El Diario

Q. Where before?
A. El Universal and for the Organization Mexican Editorial and also for the Radio Canyon.

Q. Do you have custody of your son?
A. Yes, he's lived with me since he was 4 years.

Q. Does he still have contact with his mother?
A. Rarely

Q. Who else lived with you?
A. just my son.

Q. Why did you leave on Monday?
A. I am very afraid of the soldiers will kill me.

Q. Why would they kill you?
A. In February 2005, I wrote a report about a robbery that went on in Paloma.

Q. Did anything happen after reporting this in 2005?
A. Yes, right after that, the General of the 5th zone of the army, Gen. Vega. He came to talk to me about the report.

Q. Why did he talk to you about that report?
A. He was upset b/c other high ranking officials didn't like that report and were mad.

Q. Why did the military care about you reporting on a robbery?
A. There were several incidents that happened in Paloma and there was one where soldiers robbed a hotel in Paloma and that is what I reported.

Q. What did the general say to you?
A. He said that I already wrote 3 articles implicating soldiers and he wasn't going to allow me to write any more.

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Q. Did he do anything?
A. He threatened me and wanted me to get in a military car and go with them. I was very scared so I had to apologize. My son was with me at that time and people were greeting us on the street so they let me go.

Q. Where did you meet this general?
A. We were across from Hotel Miami in Ascension.

Q. Was it only the general that met you?
A. He was with his entire squad. There was another high ranking official named Martinez Piedra and the platoon of about 20 men.

Q. Did they say or do anything else?
A. They didn't want to see another article about soldiers.

Q. What did you do after they let you leave?
A. I went home and then talked to my boss immediately and told him what happened.

Q. What did boss say?
A. He told me it was my decision to denounce them. I did denounce them. I also went to the National Commission for Human Rights.

Q. To whom did you denounce?
A. In Nuevo Casa Grande, the Public Ministry.

Q. What happened with your denouncement?
A. They started investigation on both parts but to be honest, nothing came out of it. Myself and the military decided to leave it and to be honest, I was scared so I didn't want to push it. I also noticed that state authorities tried to delay the process so I was afraid.

Q. How delay?
A. Even the National Commission of Human Rights noticed the delays and took note of that.

Q. Do you have that report from the Commission?
A. Yes, I have it here with me.

Q. Did you go back to reporting?
A. Yes, with the same company.

Q. Were you still afraid?
A. Yes, I was.

Q. Did you do anything differently?
A. I took more precaution. I tried to use more easy/light terms if I had to write about soldiers.

Q. Since 2005, have had further problems?

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A. With the military. This past May 5, they came into my house in the middle of the night. They didn't have a search order to allow them to be there.

Q. Did they say anything when they broke in?

A. They said they received an anonymous denouncement about me and they were looking for drugs and weapons in my house.

Q. What do you think was the reason?

A. I think they were still resentful toward me and did it for revenge.

Q. Did they say anything else?

A. They said they were looking for drugs and arms. They broke the door. They basically vandalized my house. They stole my wallet with money and identification.

Q. Did they take anything else?

A. That is all.

Q. Why would they think you had drugs and weapons in your house?

A. I don't know; I think they are still resentful toward me.

Q. Had you recently written any articles about the military?

A. No, but the incident that happened in my house, my co-workers wrote about it.

Q. Did you denounce them this time?

A. I went to the Public Ministry and Commission on Human Rights.

Q. What happened?

A. The state police came to my house to review the damage and made a report and said they would work with the Commission.

Q. Had you heard anything from the Commission?

A. They accepted my claim.

Q. Is there a resolution from the Commission?

A. Not yet.

Q. Anything else happen?

A. Last Saturday, I noticed there were some people driving around watching me at my office and home. A female friend has contact with the military. She contacted me and told me that I had to leave immediately b/c the military was going to kill me.

Q. Did she say anything else?

A. She just said to take my son and leave.

Q. Who is this friend?

A. She is a teacher.

Alien Number: A77 491 780
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Q. How would she have such contact with the military to get this information?

A. I really don't know what her relationship was. I did notice people following me home and at office.

Q. Why do you think the military would wait 3 years after you wrote the article to try to kill you?

A. Time doesn't matter to them. They were very offended by what I wrote.

Q. Why do you think they didn't do anything earlier, say in 2006 or 2007?

A. I believe this is the right time b/c the government has started a fight against the organized crime and have increased their presence in the area. My case has nothing to do with the organized crime. This is the right time for the military to take advantage of the opportunity.

Q. Do you know other reporters who received similar treatment?

A. Other co-workers at the newspaper for Ciudad Delicias had problems with military and national police.

Q. What did those co-workers say happen to them?

A. Those reporters had written articles about federal police and military in organized crime.

Q. What happened to those reporters after writing those articles?

A. They are still working but are very scared.

Q. Do you know if they were threatened or anything else?

A. I don't know.

Q. Do you think anyone from your government could protect you from any future harm?

A. No, no one is going to protect me; that is why I came here.

Q. Your reporting to the Commission on Human Rights, could they do anything?

A. They said they would follow up on the case but that is all they said they could do.

Q. Could you live safely in another part of Mexico?

A. No b/c the military has contacts everywhere. They can trace my name.

Q. Have you ever persecuted (harmed, or hurt) another human being?

A. No.

Q. Have you ever been arrested for anything (in any country)?

A. No.

Q. Have you ever been affiliated with, supported, or assisted a group that has been accused of using violence to realize its goals?

A. No.

Q. Is there anything else that you would like to add that you think we have not covered today?

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Date: June 19, 2008
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A. I believe that is all. I put myself in God's hand and see if this government is willing to protect me.

Q. The documents you have there today. What documents do you have there?

A. I have several documents from the National Commission. I also have letters from National Commission that wrote about the negligence of the state in my case. I also have the denouncement to the Public Ministry from May 2008. I also have a life insurance policy that I was forced to buy after they broke into my house. I am about to receive a copy of the newspaper articles that were written about my case.

Q. Who forced you to buy a life insurance policy?

A. No one forced me but I have a son. I felt compelled to do it b/c my son only depends on me.

PARAGRAPH 3.2, FORM I-870, READ TO APPLICANT

INTERVIEW CONCLUDED - 1050

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